



January 13, 2006

Office of the Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Fax Ban Coalition Petition for Declaratory Ruling Regarding §1758.43 of the California Business and Professions Code. Docket No. 02-278.

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the petition for declaratory ruling filed November 7, 2005, by the Fax Ban Coalition regarding §17538.43 of the California Business and Professions Code.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

ARTBA supports the petition filed by the Fax Ban Coalition and urges the FCC to exercise its proper jurisdiction and preempt §17538.43, a law which would regulate all fax messages originating from or being sent to California. We are concerned this law will severely and unjustifiably impede the relationship between trade associations and their members in California and across the nation. Specifically, trade associations undertake a variety of communication activities with their members on a daily basis that could be directly affected by §17538.43 and other state laws which would regulate interstate transmission of messages by facsimile.

§17538.43 will prevent national associations from being able to provide services and information upon which their members have come to expect and rely. Conveying information to individuals that voluntarily chose to join an organization is one of the core missions of trade associations. These activities include informational updates on relevant legislative and regulatory matters, technical support for business activities, and information on association products and services for which members are eligible. Denying trade association members access to these services not only impinges on their rights, but undermines the business relationship they entered upon joining an association.



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On its face, §17538.43 is also a violation of interstate commerce as it allows the laws on one state (California) to impact fax communications in every other state in the nation. While the law only applies to fax machines in California, its reach extends to any fax message which is sent or received anywhere else in the country if that message either originated in or was sent from California. Thus, any association member from another part of the country who wishes to correspond with an association member in California is regulated by this law.

This sets a very dangerous precedent. Other states could conceivably follow suit and set up their own individual regulations regarding the transmission of fax messages and, thereby, create a patchwork of different laws governing these types of communications across the country. As such, the legitimate use of fax messages as a means for national associations to interact with their members could be severely compromised by the burden of having to navigate up to fifty different state requirements. Also, with the existence of toll free numbers and call forwarding technology, senders of fax messages can not always track where a fax is received. Thus, a fax could end up going to a California recipient and violating §17538.43 without any intent or knowledge on behalf of the sender.

In order to prevent unnecessary legal conflict and potentially contradicting state requirements, fax messaging is more appropriately regulated at the federal level. Fax messaging routinely occurs across state lines, and there should not be multiple sets of requirements for fax procedures. The proper vehicle for setting fax messaging standards is the federal "Telephone Consumer Protection Act," which successfully balances the interests of national associations with those of citizens in not receiving "junk faxes." California's law does not achieve this balance primarily because it does not include an "established business relationship" exemption which allows associations to communicate with their members without violating the law.

ARTBA urges the FCC to properly exercise its jurisdiction over fax messaging and find in response to the Fax Ban Coalition's petition that not only should §17538.43 be preempted, but all similar state level fax regulations should be preempted as well. Only through federal regulation can the FCC achieve the objective of reducing objectionable and unwanted fax communications without stifling legitimate communications between consenting parties.

Sincerely,



T. Peter Ruane
President & C.E. O.